IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 203 of 1998

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Against the judgment of conviction and order of sentence dated 16.05.1998 respectively passed by Sri S. K. Sharma, learned Special Judge, C. B. I. (South), Patna in Special Case No. 74 of 1985.

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Sibnath Bodhak @ Sheo Nath Bodhak, Son of Shri Kalipada Bodhak, resident of 22 D/2, North Avenue (Paik Para), Calcutta – 800030, at present posted and working as Branch Manager, Bank of India, Bishnupur Branch, District Bankura (West Bengal).

.... Appellant.

Versus

The State of Bihar through the Central Bureau of Investigation.

.... Respondent.

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With

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Criminal Appeal (SJ) No. 205 of 1998

Shri Aditya Narain Chaurasia, Son of Late Anirudh Narain Chaurasia, Resident of village – Thakurgaon, Police Station – Burmo, District – Ranchi.

.... Appellant.

Versus

The State of Bihar through the Central Bureau of Investigation.

.... Respondent.

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For the Appellants : Mr. Rajendra Narain, Advocate.
Mrs. Anju Narain, Advocate.
Mr. Umesh Kumar Roy, Advocate.

For the Respondents : Mr. Bipin Kumar Sinha, (For the C. B. I.).

08/ 05.09.2011 The preliminary objection has been raised that the subject matter of the appeal false exclusively within the territorial jurisdiction of the State of Jharkhand i.e. the Jharkhand High Court and hence the same is beyond the

jurisdiction of this Hon'ble Court and required to be transferred.

2. These two appeals arise out of the order of conviction recorded by the learned Special Judge, C. B. I. (South Bihar), Patna in Special Case No. 74 of 1985.

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3. The case of the prosecution is that the appellant, namely, Sibnath Bodhak @ Sheo Nath Bodhak working as Branch Manager, Bank of India, Bishunpur Branch, Thakurgaon Ranchi in conspiracy with the appellant Aditya Narain Chaurasia a cattle dealer took illegal gratification for sanctioning loan in utter disregard to the rules and norms of the Bank. Further case is that the land of Bhagalpur and Muzaffarpur was taken into consideration for grant of loan. All the acts of commission of crime occurred at Thakurgaon in Ranchi falls under the territorial jurisdiction of Jharkhand. Section 177 of the Cr. P. C. provides that every offence shall be inquired into and tried by a court within whose jurisdiction the offence committed. The appeal can be heard by a court under which the Sessions Court is sub-ordinate.

4. Learned counsel for the respondent contended that all act of committing the crime exclusively falls within the territorial jurisdiction of the State of Jharkhand hence

Jharkhand High Court has jurisdiction to hear the appeal. So these appeals required to be transferred to the Jharkhand High Court under Section 34 of the Bihar Re-organization Act, 2000 (henceforth referred to as the Act).

5. Learned counsel for the appellants, however, admitted that all act of constituting the commission of the offence exclusively falls within the territory of the State of Jharkhand but contended that sub-section 3 of Section 34 of the Bihar Re-organization Act, 2000 provided that the Patna High Court shall have jurisdiction to hear the appeal in case the impugned order passed before appointed date. It has further been contended that in the F. I. R. it has been mentioned that the land of Bhagalpur and Muzaffarpur (under Patna High Court) was considered for granting loan by the accused persons. During the investigation of the case, the C. B. I. took the signature of the accused Sibnath Bodhak at Jamui which falls under Patna High Court and the impugned order passed by the Special Court, (South Bihar), Patna having its seat at Patna hence Patna High Court has jurisdiction to hear the appeal.

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6. However, to consider the contentions, I would like to refer Sections 34 and 27 of the Bihar Re-Organization Act, 2000.

"34. Transfer of proceedings from High Court at Patna to High Court of Jharkhand.-

(I) Except as hereinafter provided, the High Court at Patna shall, as from the appointed day, have no jurisdiction in respect of the transferred territory.

(2) Such proceedings pending in the High Court at Patna immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of the High Court, having regard to the places of accrual of the cause of action and other circumstances, to be proceedings which are ought to be heard and decided by the High Court of Jharkhand shall as soon as may be after such certification, be transferred to the High Court of Jharkhand.

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section or in Section 27, but save as hereinafter provided, the High Court at Patna shall have, and the High Court of Jharkhand shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings <u>where any such proceedings seek any relief in respect of any order passed by the High Court at Patna before the appointed day</u>:

Provided that if after such proceedings have been entertained by the High Court at Patna, it appears to the Chief Justice of the High Court that they ought to be transferred to the High Court of Jharkhand, he shall order that they shall be so

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transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court at Patna –

(a) before the appointed day, in any proceeding to the High Court of Jharkhand by virtue of sub-section (2), or (b) in any proceedings with respect to which the High Court at Patna retains jurisdiction by virtue of sub-section (3) shall for all purposes have effect not only as an order of the High Court at Patna, but also as an order made by the High Court of Jharkhand."

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"27. Jurisdiction of High Court.- The High Court of Jharkhand Shall have, in respect of any part of the territories included in the State of Jharkhand, all such jurisdiction, powers and authorities as, under the law in force immediately before the appointed day, are exercisable in respect of that part of the said territories by the High Court at Patna."

7. On conjoint reading of Sections 27 and 34(1) of the Bihar Re-Organization Act, 2000 it is apparent that from the appointed date, the Patna High Court shall have no jurisdiction with regard to the transfer territory i.e. the territory which has been transferred to the State of Jharkhand and falls under the jurisdiction of Jharkhand High Court. Hence, it is apparent that the Patna High Court shall have no jurisdiction to hear the cases in which the cause of action has arisen

exclusively within the territorial jurisdiction of the State of Jharkhand.

8. Sub-section 2 of Section 34 of the Bihar Re-organization Act, 2000 provides that such proceeding or cases which fall under the territorial jurisdiction of the State of Jharkhand pending in the Patna High Court after appointed date shall be transferred to the High Court of Jharkhand after certification of the Chief Justice of the Patna High Court. Hence, the case which is having the territorial jurisdiction exclusively under the Jharkhand High Court is required to be transferred to the Jharkhand High Court after certification of the Chief Justice of Patna High Court.

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9. Now for the interpretation of Sub-section 3 of Section 34 of the Bihar Re-Organization Act, 2000 it is convenient to break up in four parts.

I. The first part is its non-obstante clause as it starts with notwithstanding anything contained under Sub-sections 1 and 2 of Sections 34 and 27 of the Bihar Re-Organization Act and hence Sub-section 3 shall prevail over Sub-sections 1 and 2 of Section 34 and Section 27 of the Bihar Re-organization Act, 2000.

II. The second part states that the Patna High Court

shall have the jurisdiction to entertain, hear and dispose of appeals, application for leave to appeal to the Supreme Court, applications for review and other proceedings……

III. The third part which is underlined provides (a) ……"where any such proceeding is with regard to a relief in respect of any order passed by the High Court at Patna before the appointed date." (b) So this part qualifies that it covers only those cases in which a relief has been sought against an order passed by the High Court of Patna before the appointed date are under challenged. (c) Hence, sub-section 3 of section 34 is applicable in cases in which an order of the Hon'ble High Court is under challenged. (d) Hence, sub-section 3 of Section 34 of the Act pre-supposes a case in which the order of the Patna High Court is under challenged.

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IV. The fourth part is the proviso to sub-section 3 which provides the Chief Justice of the Patna High Court in such case in its discretion even to transfer from the Patna High Court to the Jharkhand High Court.

10. Hence, to sum up sub-section 3 of Section 34 provides that in cases in which the order of Patna High Court is under challenge has been entertained either in appeal, leave to

appeal to Supreme Court, review and any other proceedings irrespective of i.e. even if the territorial jurisdiction falls under Jharkhand High Court, the Patna High Court shall have the jurisdiction to hear the appeal. However, in such case the Chief Justice of the Patna High Court may in its discretion, if consider fit to transfer those cases then may transfer the case to the Jharkhand High Court.

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11. The submission of the learned counsel for the appellants that under sub-section 3 of Section 34 of the Bihar Re-organization Act the Patna High Court has jurisdiction to hear the appeal against the order passed by sub-ordinate court i.e. Sessions Court or Special Court is totally misconceived. Sub-section 3 of Section 34 of the Bihar Re-organization Act, 2000 as discussed above is applicable to cases in which the order of Patna High Court is under challenge. The submissions of the learned counsel for the appellants that said third part of Sub-section 3 of Section 34 of the Bihar Re-organization Act, 2000, which is under lined by me for emphasis, is only applicable to the "proceeding" and not applicable to appeals, applications for leave to appeal to the Supreme Court and review is devoid of any merit as two parts other proceedings as well as appeals, applications for leave to appeal to Supreme

Court and review are joined by ‘and’. The present appeal is an appeal against the order passed by Special Judge, (South Bihar) Patna is equivalent to the Court of Session’s Judge. Hence, the appeal is an appeal filed against an order of a Court sub-ordinate to the High Court. Whereas sub-section 3 of Section 34 of the Bihar Re-organization Act, 2000 is applicable to cases in which an order passed by the Hon’ble Patna High Court is under challenged which is not the case. Hence, Sub-section 3 of Section 34 of the Bihar Re-organization Act, 2000 is not at all applicable to this case.

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12. The further contentions of the learned counsel for the appellants are that in the F. I. R. there is averment that the loan was granted in respect of land of Bhagalpur and Muzaffarpur for which the illegal gratification was taken. However, it is not in dispute that whatever the papers regarding the land was filed in the territorial jurisdiction of the State of Jharkhand and mere filing of paper with regard to the land of any other places will not give the jurisdiction to that place. In this regard it is relevant to refer 2001 (4) PLJR 107 (R. K. Rana Vs. Braj Bhushan Prasad & Ors.). Here in that case the question of transfer of 36 cases was under consideration before the Full Bench of the Patna High Court. The Patna High Court

after taking into consideration the fact that all part of the cause of action arose in territorial jurisdiction of Jharkhand, transferred 23 cases to the Jharkhand High Court but retained 13 cases on the ground that in these cases there is allegation of conspiracy having taken place at Patna. The Hon'ble Supreme Court in such circumstance ordered to transfer those 13 cases to the Jharkhand High Court on the ground that a Court has jurisdiction to try the offence on the basis of place where offence was committed. The alleged offences such as conspiracy, attempt or abatement to commit the offence are only linked with the main case and jurisdiction will not be determined on the basis of conspiracy. Hence, drawing the analogy the case at hand is of much better footing where all the allegations for the commission of offence is within the State of Jharkhand and merely stating that the loan was granted in respect of land of Bhagalpur and Muzaffarpur will not give the jurisdiction to the Patna High Court and hence there is no merit in this appeal.

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13. The next question raised that during the investigation the signature of the accused Sibnath Bodhak was recorded at Jamui also does not give the jurisdiction to the Patna High Court. No law permits to give jurisdiction to the

Court where the Investigating Officer went to investigate a case.

14. Learned counsel for the appellants, however, contended that since the order under challenge has been passed by the C. B. I. Court (South Bihar), Patna having seat at Patna and hence the Patna High Court has jurisdiction to entertain the appeal. Reliance has been placed on a decision reported in 2002 (2) PLJR 742 (Shyam Chandra Chaudhary Vs. The State of Bihar & Ors.) drawing an analogy from the said case that since order passed by the court having seat at Patna is not sub-ordinate to Jharkhand High Court and hence Jharkhand High Court has no jurisdiction to hear the appeal. In the said case a person was lodged in Bhagalpur Jail under the order passed by the Dumka Civil Court under the Jharkhand High Court. The Writ petition was filed before the Patna High Court for the release of the person kept in Bhagalpur Jail challenging the order of the Dumka Civil Court which is sub-ordinate to Jharkhand High Court. The Patna High Court refused to entertain the Writ on the ground that Patna High Court cannot entertain a Writ challenging the order of Dumka Court which is under the Jharkhand High Court.

15. Hence, it is contended that since the order under

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challenge in appeal is of court having seat at Patna under the Patna High Court. If the same is transferred to the Jharkhand High Court then Jharkhand High Court may not have jurisdiction to hear the appeal against an order passed by the Patna High Court as the order passed by the Patna Court is sub-ordinate to the Patna High Court.

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16. However, the assertions made by the learned counsel for the appellants are attracting but is totally misconceived. The analogy drawn by the learned counsel for the appellants from case reported in 2002 (2) PLJR 742 (Shyam Chandra Chaudhary Vs. The State of Bihar & Ors.) is not at all applicable to the facts and circumstances of this case. Here the impugned order was passed in the year 1998 under the unified Bihar, the Special Court (South Bihar) which passed the impugned order though had a seat at Patna but it was designated at Special Court, (South Bihar), Patna and it was meant for the territorial jurisdiction of the area which are transferred territory to the State of Jharkhand and has fallen under the territory of the State of Jharkhand after the appointed date. Once it is established that the Court was designated as South Bihar with a jurisdiction covering the territorial jurisdiction of the area which has fallen under the State of

Jharkhand and hence the Special Court had the orientation of the transferred territory and obviously under Jharkhand Court which has fallen under the State of Jharkhand. Hence, the argument advanced that the Court had seat at Patna is of no consequence as it was itself designated as Special Court, South Bihar which is decided the territorial jurisdiction.

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17. Hence, in view of the above discussions I am of the firm view that the place of occurrence in these cases exclusively falls with the transferred territory of the State of Jharkhand and hence under Section 34(1) and Section 27 of the Bihar Re-organization Act, 2000 the Patna High Court has no jurisdiction to hear the appeal and under Sub-section 2 of Section 34 of the Bihar Re-organization Act, 2000 it is required to be transferred to the Jharkhand High Court after certification of the Chief Justice of the Patna High Court and Sub-section 3 of Section 34 is not at all applicable in the facts and circumstances of this case. Hence, let the matter be placed before Hon'ble the Chief Justice in accordance with law.

Kundan **(Gopal Prasad, J.)**